

SENATE CONSERVATION COMMITTEE SUBSTITUTE FOR  
SENATE BILL 334

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

AN ACT

RELATING TO TAXATION; PROVIDING FOR AND CHANGING REQUIREMENTS  
FOR CERTAIN TAX CREDITS PERTAINING TO SOLAR ENERGY USE; MAKING  
AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-2A-19 NMSA 1978 (being Laws 2002,  
Chapter 59, Section 1, as amended) is amended to read:

"7-2A-19. RENEWABLE ENERGY PRODUCTION TAX CREDIT--  
LIMITATIONS--DEFINITIONS--CLAIMING THE CREDIT.--

A. A taxpayer that owns a qualified energy  
generator certified by the energy, minerals and natural  
resources department is eligible for a tax credit in an amount  
equal to one cent (\$.01) per kilowatt-hour for the first four  
hundred thousand megawatt-hours of electricity produced by the  
qualified energy generator using a wind- or biomass-derived

1 qualified energy resource in the taxable year. A taxpayer that  
2 owns a qualified energy generator certified by the energy,  
3 minerals and natural resources department is eligible for a tax  
4 credit in an amount equal to two cents (\$.02) per kilowatt-hour  
5 for the first two hundred thousand megawatt-hours of  
6 electricity produced by the qualified energy generator using a  
7 solar-light- or solar-heat-derived qualified energy resource in  
8 the taxable year. A taxpayer shall be eligible for the tax  
9 credit for ten consecutive years, beginning on the date the  
10 qualified energy generator begins producing electricity. The  
11 tax [~~credit~~] credits provided in this section may be referred  
12 to as the "renewable energy production tax [~~credit~~] credits".

13 B. As used in this section:

14 (1) "biomass" means agricultural or animal  
15 waste; thinnings from trees less than fifteen inches in  
16 diameter, slash and brush; lumbermill or sawmill residues; and  
17 salt cedar and other phreatophytes removed from watersheds or  
18 river basins;

19 (2) "qualified energy generator" means a  
20 facility with at least [~~ten megawatts~~] one megawatt generating  
21 capacity located in New Mexico that produces electricity using  
22 a qualified energy resource and that sells that electricity to  
23 an unrelated person; and

24 (3) "qualified energy resource" means a  
25 resource that generates electrical energy by means of a

1 fluidized bed technology or similar low-emissions technology or  
 2 a zero-emissions generation technology that has substantial  
 3 long-term production potential and that uses only the following  
 4 energy sources:

5 (a) solar light;

6 (b) solar heat;

7 (c) wind; or

8 (d) biomass.

9 C. A taxpayer may request certification of  
 10 eligibility for ~~[the]~~ a renewable energy production tax credit  
 11 from the energy, minerals and natural resources department,  
 12 which shall determine if the applicant is a qualified energy  
 13 generator; provided that the department may certify the  
 14 eligibility of an energy generator only if the total amount of  
 15 electricity that may be produced annually by all qualified  
 16 energy generators that are certified will not exceed ~~[two~~  
 17 million] one million six hundred thousand megawatt-hours.

18 Applications shall be considered in the order received. The  
 19 energy, minerals and natural resources department may estimate  
 20 the annual power-generating potential of a generating facility  
 21 for the purposes of this section. The energy, minerals and  
 22 natural resources department shall issue a certificate to the  
 23 applicant stating whether the applicant is an eligible  
 24 qualified energy generator and the estimated annual production  
 25 potential of the generating facility, which shall be the limit

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1 of that facility's energy production eligible for the tax  
2 credit for the taxable year. The energy, minerals and natural  
3 resources department may issue rules governing the procedure  
4 for administering the provisions of this subsection.

5 D. To claim a renewable energy production tax  
6 credit, a taxpayer that has been certified as eligible pursuant  
7 to Subsection C of this section shall submit to the taxation  
8 and revenue department the certificate issued by the energy,  
9 minerals and natural resources department, documentation of the  
10 amount of electricity produced by the taxpayer's facility in  
11 the taxable year and any other information the taxation and  
12 revenue department may require to determine the amount of the  
13 tax credit due the taxpayer.

14 E. Once a taxpayer has been granted a renewable  
15 energy production tax credit for a given facility, that  
16 taxpayer shall be allowed to retain its original date of  
17 application for tax credits for that facility until either the  
18 facility goes out of production for more than six consecutive  
19 months in a year or until the facility's ten-year eligibility  
20 has expired.

21 F. ~~[The]~~ For a qualified energy generator placed in  
22 commercial operation after January 1, 2007, a renewable energy  
23 production tax credit may be deducted from the taxpayer's New  
24 Mexico corporate income tax liability for the taxable year. If  
25 the amount of the tax credit claimed exceeds the taxpayer's

1 corporate income tax liability, the excess [~~may be carried~~  
2 ~~forward for up to five consecutive taxable years~~] shall be  
3 refunded to the taxpayer."

4 Section 2. [NEW MATERIAL] SHORT TITLE. -- Sections 2  
5 through 7 of this act may be cited as the "Solar Thermal and  
6 Photovoltaic Systems Tax Credit Act".

7 Section 3. [NEW MATERIAL] DEFINITIONS. -- As used in the  
8 Solar Thermal and Photovoltaic Systems Tax Credit Act:

9 A. "department" means the taxation and revenue  
10 department;

11 B. "photovoltaic system" means a stand-alone or a  
12 grid-connected energy system that collects or absorbs sunlight  
13 for conversion into electricity; and

14 C. "solar thermal system" means an energy system  
15 that collects or absorbs solar energy for conversion into heat  
16 for the purposes of space heating and water heating.

17 Section 4. [NEW MATERIAL] INCOME TAX--CORPORATE INCOME  
18 TAX--CREDIT FOR SOLAR THERMAL SYSTEM INSTALLATION. --

19 A. Except as otherwise provided by Subsection C of  
20 this section, a person who files an individual New Mexico  
21 income tax return and who, during any taxable year beginning on  
22 or after January 1, 2006 and ending on or before December 31,  
23 2015, installs a solar thermal system at a residence in New  
24 Mexico owned by that person may apply for, and the department  
25 may allow, a tax credit in an amount equal to fifteen percent

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1 of the installation costs, provided that the maximum tax credit  
2 that may be claimed by the taxpayer pursuant to this subsection  
3 shall not exceed one thousand five hundred dollars (\$1,500).

4 B. Except as otherwise provided by Subsection C of  
5 this section, a person that files a corporate income tax return  
6 and that, during any taxable year beginning on or after January  
7 1, 2006 and ending on or before December 31, 2015, installs a  
8 solar thermal system at a commercial facility in New Mexico  
9 owned by that person may apply for, and the department may  
10 allow, a credit in an amount equal to fifteen percent of the  
11 installation costs, provided that the maximum tax credit that  
12 may be claimed by the taxpayer pursuant to this subsection  
13 shall not exceed one thousand five hundred dollars (\$1,500).

14 C. The department shall not allow a tax credit  
15 pursuant to this section if allowing that tax credit would  
16 cause the aggregate amount of tax credits allowed pursuant to  
17 this subsection to exceed one million dollars (\$1,000,000).

18 D. The tax credit allowed pursuant to Subsection A  
19 of this section may only be deducted from a taxpayer's New  
20 Mexico income tax liability for the taxable year. Any portion  
21 of the maximum credit provided by this section that remains  
22 unused at the end of the taxpayer's taxable year may be carried  
23 forward for seven taxable years; provided that the total  
24 credits shall not exceed the maximum allowable credit pursuant  
25 to Subsection A of this section. If a person claiming a tax

1 credit pursuant to Subsection A of this section does not have  
2 any New Mexico income tax liability, the tax credit may be  
3 refunded to that person.

4 E. A husband and wife who file separate returns for  
5 a taxable year in which they could have filed a joint return  
6 may each claim only one-half of the credit allowed pursuant to  
7 Subsection A of this section that would have been allowed on a  
8 joint return.

9 F. The tax credit allowed pursuant to Subsection B  
10 of this section may only be deducted from a taxpayer's  
11 corporate income tax liability for the taxable year. Any  
12 portion of the maximum credit provided by this section that  
13 remains unused at the end of the taxpayer's taxable year may be  
14 carried forward for seven consecutive taxable years; provided  
15 that the total credits claimed under this section shall not  
16 exceed the maximum allowable pursuant to Subsection B of this  
17 section. If a person claiming a tax credit pursuant to  
18 Subsection B of this section does not have any corporate income  
19 tax liability, the tax credit may be refunded to that person.

20 Section 5. [NEW MATERIAL] INCOME TAX--CORPORATE INCOME  
21 TAX--CREDIT FOR PHOTOVOLTAIC SYSTEM INSTALLATION. --

22 A. A person who files an individual New Mexico  
23 income tax return and who, during any taxable year beginning on  
24 or after January 1, 2006 and ending on or before December 31,  
25 2015, installs a photovoltaic system in a residence in New

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1 Mexico owned by that person may apply for, and the department  
2 may allow, a credit in an amount equal to three dollars fifty  
3 cents (\$3.50) per nameplate direct current wattage of that  
4 photovoltaic system, provided that:

5 (1) the maximum tax credit that may be claimed  
6 by the taxpayer pursuant to this subsection shall not exceed  
7 ten thousand dollars (\$10,000); and

8 (2) the department shall not allow a tax  
9 credit pursuant to this subsection if allowing that tax credit  
10 would cause the aggregate amount of tax credits allowed  
11 pursuant to this subsection to exceed two million dollars  
12 (\$2,000,000).

13 B. A person that files a corporate income tax  
14 return and that, during any taxable year beginning on or after  
15 January 1, 2006 and ending on or before December 31, 2015,  
16 installs a photovoltaic system in a facility in New Mexico that  
17 is owned by that person may apply for, and the department may  
18 allow, a credit in an amount equal to one dollar fifty cents  
19 (\$1.50) per nameplate direct current wattage of that  
20 photovoltaic system, provided that:

21 (1) the maximum tax credit that may be claimed  
22 by the taxpayer pursuant to this subsection shall not exceed  
23 seventy-five thousand dollars (\$75,000); and

24 (2) the department shall not allow a tax  
25 credit pursuant to this subsection if allowing that tax credit

1 would cause the aggregate amount of tax credits allowed  
2 pursuant to this subsection to exceed one million dollars  
3 (\$1,000,000).

4 C. The tax credit allowed pursuant to Subsection A  
5 of this section shall be deducted from a taxpayer's New Mexico  
6 income tax liability for the taxable year. Any portion of the  
7 maximum credit provided by Subsection A of this section that  
8 remains unused at the end of the taxpayer's taxable year may be  
9 carried forward for seven consecutive taxable years; provided  
10 that the total credits claimed under this section shall not  
11 exceed the maximum allowable pursuant to Subsection A of this  
12 section. If a person claiming a tax credit pursuant to  
13 Subsection A of this section does not have any New Mexico  
14 income tax liability, the tax credit may be refunded to that  
15 person.

16 D. A husband and wife who file separate returns for  
17 a taxable year in which they could have filed a joint return  
18 may each claim only one-half of the credit allowed pursuant to  
19 Subsection A of this section that would have been allowed on a  
20 joint return.

21 E. The tax credit allowed pursuant to Subsection B  
22 of this section shall be deducted from the taxpayer's corporate  
23 income tax liability for the taxable year. Any portion of the  
24 maximum credit provided by Subsection B of this section that  
25 remains unused at the end of the taxpayer's taxable year may be

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1 carried forward for seven consecutive taxable years; provided  
2 that the total credits claimed under this section shall not  
3 exceed the maximum allowable pursuant to Subsection B of this  
4 section. If a person claiming a tax credit pursuant to  
5 Subsection B of this section does not have any corporate income  
6 tax liability, the tax credit may be refunded to that person.

7 Section 6. [NEW MATERIAL] ADMINISTRATION. --

8 A. The energy, minerals and natural resources  
9 department shall adopt rules for administration of the  
10 provisions of the Solar Thermal and Photovoltaic System Tax Act  
11 no later than September 30, 2005.

12 B. A solar thermal system or a photovoltaic system  
13 for which a tax credit is allowed under the Solar Thermal and  
14 Photovoltaic System Tax Act must be certified by the energy,  
15 minerals and natural resources department to meet technical  
16 requirements established by the energy, minerals and natural  
17 resources department. The energy, minerals and natural  
18 resources department shall adopt and publish on its web site an  
19 initial description of technical requirements no later than  
20 August 1, 2005. The energy, minerals and natural resources  
21 department may modify those requirements as needed to ensure a  
22 high level of system quality and performance.

23 C. The taxation and revenue department shall  
24 prescribe application forms for the tax credits allowed  
25 pursuant to the Solar Thermal and Photovoltaic System Tax Act

1 no later than December 31, 2006.

2 Section 7. [NEW MATERIAL] REPORT TO APPROPRIATE INTERIM  
 3 COMMITTEE. -- Beginning in 2008, the energy, minerals and natural  
 4 resources department shall report to the appropriate interim  
 5 committee of the legislature every two years and provide an  
 6 update of the status of the Solar Thermal and Photovoltaic  
 7 Systems Tax Act and recommendations for modifications of that  
 8 act.

9 Section 8. APPROPRIATION. -- One hundred fifty thousand  
 10 dollars (\$150,000) is appropriated from the general fund to the  
 11 energy, minerals and natural resources department for  
 12 expenditure in fiscal year 2006 to provide training to  
 13 installers, inspectors and the public on the tax credits  
 14 allowed pursuant to the Solar Thermal and Photovoltaic System  
 15 Tax Act and on installation and operation of solar thermal  
 16 systems and photovoltaic systems. Any unexpended or  
 17 unencumbered balance remaining at the end of fiscal year 2006  
 18 shall revert to the general fund.

19 Section 9. APPLICABILITY. -- The provisions of this act  
 20 apply to taxable years beginning on or after January 1, 2006.

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